

AMENDED IN ASSEMBLY AUGUST 24, 2006

AMENDED IN SENATE MAY 4, 2005

**SENATE BILL**

**No. 832**

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**Introduced by ~~Senators Perata, Lowenthal, and Torlakson~~**

***Senator Perata***

**(Coauthor: ~~Assembly Member Laird~~)**

February 22, 2005

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~~An act to amend Section 21159.24 of the Public Resources Code, relating to environmental quality; add Section 3294.5 to the Civil Code, relating to punitive damages, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 832, as amended, Perata. ~~CEQA: infill development. Punitive damages.~~

*Existing law provides that in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.*

*This bill would provide, with respect to an action filed after August 16, 2004 that results of a final judgment or settlement that is rendered on or before June 30, 2011, and includes punitive damages, that the punitive damages shall be apportioned according to a specified formula. Pursuant to this formula, 25% would be paid to the plaintiff or plaintiffs and 75% of the award would be paid to the Director of the Department of Finance for deposit into the Public Benefit Trust Fund, which would be created by the bill. The fund would be*

*administered by the Department of Finance. Of the amounts deposited into the fund, 25% would be continuously appropriated to pay the plaintiff's attorney, as specified, and the remainder would be available for annual appropriation in the Budget Act, to be used for purposes consistent with the nature of the award, as specified.*

*The bill would specify the state and local income tax treatment of punitive damages awards. The bill would further specify that the state shall not be a party in interest to, or intervene in, the underlying action, and that the sole right of the state shall be to the proceeds payable to the Public Benefit Trust Fund. The bill would also prohibit informing a jury that a portion of a punitive damages award will be paid to a government fund or that a punitive damages award would result in a windfall to the plaintiff.*

~~The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. Existing law exempts from CEQA a residential project located on an infill site within an urbanized area that meets specified criteria, including that the site of the project is not more than 4 acres in total area and the project does not contain more than 100 residential units.~~

~~This bill would provide an alternative to those criteria if the site is located in a city with a population of more than 200,000 persons, the site is not more than 10 acres, and the project does not have less than 200 or more than 300 residential units, as adopted by a resolution of the city council.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3294.5 is added to the Civil Code, to  
2     read:

3     3294.5. (a) The Legislature finds and declares that  
4     extraordinary and dire budgetary needs have forced the  
5     enactment of this extraordinary measure to allocate temporarily  
6     for the state's Public Benefit Trust Fund a substantial portion of  
7     any punitive damages paid from a judgment during the limited

1 *time period specified in the statute. The Legislature further finds*  
2 *and declares that this uniquely extraordinary legislative action*  
3 *shall not be construed or interpreted in any way to establish any*  
4 *policy, precedent, presumption, or inference in any case or in*  
5 *any other setting, including future legislatures, regarding the*  
6 *award of punitive damages, its allocation, or the payment of*  
7 *attorney's fees arising in connection therewith.*

8 *(b) Punitive damages awarded pursuant to a final judgment*  
9 *shall be paid, as follows:*

10 *(1) Seventy-five percent shall be paid to the Public Benefit*  
11 *Trust Fund, which is hereby created in the State Treasury, to be*  
12 *administered by the Department of Finance. Amounts deposited*  
13 *into the Public Benefit Trust Fund shall be available for annual*  
14 *appropriation in the Budget Act and shall be used for purposes*  
15 *consisted with the nature of the award, but in no case shall be*  
16 *used to fund the courts or judicial programs. Amounts deposited*  
17 *in the Public Benefit Trust Fund shall also be available for the*  
18 *purposes specified in subdivision (d).*

19 *(2) Twenty-five percent to the plaintiff or plaintiffs.*

20 *(c) Upon a final judgment that includes punitive damages,*  
21 *after payment of costs if any, to the plaintiff, the judgment debtor*  
22 *shall do all of the following:*

23 *(1) Pay the Public Benefit Trust Fund's proportional share of*  
24 *the punitive damages to the Director of the Department of*  
25 *Finance for deposit in the Public Benefit Trust Fund.*

26 *(2) Pay to the plaintiff's attorney, the plaintiff's proportional*  
27 *share of punitive damages.*

28 *(3) Notify the plaintiff's attorney of the amount of punitive*  
29 *damages paid to the Public Benefit Trust Fund.*

30 *(d) Upon deposit in the Public Benefit Trust Fund of proceeds*  
31 *from a final judgment punitive damages award, the plaintiff's*  
32 *attorney in the action giving rise to those proceeds shall be*  
33 *entitled to 25 percent of the proceeds received by the fund from*  
34 *the punitive damages award in that action. Notwithstanding*  
35 *Section 13340 of the Government Code, the plaintiff's attorney's*  
36 *share of the proceeds shall be continuously appropriated to pay*  
37 *those attorney's fees, provided that any claim for payment by the*  
38 *plaintiff's attorney shall be paid by the fund on July 1 of the next*  
39 *fiscal year.*

1 (e) The state shall not be a party in interest to, and shall not  
2 intervene in, any action in which its sole interest is the potential  
3 recovery of a portion of a punitive damages award under this  
4 section. The state shall not file any amicus curiae brief regarding  
5 the propriety of, or the amount of, any punitive damages award  
6 in any action in which its sole interest is the potential recovery of  
7 a portion of a punitive damages award under this section. The  
8 state's sole right to the proceeds of a punitive damages award is  
9 as provided in this section.

10 (f) Notwithstanding any other provision of law, any attorney's  
11 fees paid to an attorney from the plaintiff's share of the award  
12 shall be deemed to be the income of the attorney and not income  
13 to the plaintiff for state and local taxation purposes.

14 (g) A jury shall not be informed that any portion of a punitive  
15 damages award will be paid to a government fund, and no  
16 argument or inference shall be made to a jury that a punitive  
17 damages award would result in a windfall to the plaintiff or  
18 plaintiffs. However, nothing in this section shall be construed to  
19 affect a punitive damages award if a juror or jurors had  
20 independent knowledge that a portion of a punitive damages  
21 award will be paid to a government fund.

22 (h) This section shall only apply to actions filed after August  
23 16, 2004 and finally adjudicated, including the resolution of all  
24 mandatory or discretionary appeals, the resolution of any motion  
25 for attorney's fees on appeal and any appeals therefrom, and the  
26 issue of final remittitur, prior to the date this section ceases to be  
27 operative.

28 (i) This section shall remain in effect until July 1, 2011, and as  
29 of that date is repealed, unless a later enacted statute extends or  
30 deletes that date.

31 ~~SECTION 1. The Legislature finds and declares that the state~~  
32 ~~should provide incentives to promote infill development and~~  
33 ~~smart growth in urban areas and should discourage urban sprawl~~  
34 ~~and the resulting adverse transportation, housing, and~~  
35 ~~environmental impacts.~~

36 ~~SEC. 2. Section 21159.24 of the Public Resources Code is~~  
37 ~~amended to read:~~

38 ~~21159.24. (a) Except as provided in subdivision (b), this~~  
39 ~~division does not apply to a project if all of the following criteria~~  
40 ~~are met:~~

1 ~~(1) The project is a residential project on an infill site.~~

2 ~~(2) The project is located within an urbanized area.~~

3 ~~(3) The project satisfies the criteria of Section 21159.21.~~

4 ~~(4) Within five years of the date that the application for the~~  
5 ~~project is deemed complete pursuant to Section 65943 of the~~  
6 ~~Government Code, community-level environmental review was~~  
7 ~~certified or adopted.~~

8 ~~(5) The site of the project is not more than four acres in total~~  
9 ~~area and the project does not contain more than 100 residential~~  
10 ~~units.~~

11 ~~(6) Notwithstanding paragraph (5), if the site is in a city with a~~  
12 ~~population of more than 200,000 persons, the site is not more~~  
13 ~~than 10 acres in total area, the project does not contain less than~~  
14 ~~200 residential units or more than 300 residential units, and the~~  
15 ~~city council adopts this allowed site acreage and number of~~  
16 ~~residential units by resolution.~~

17 ~~(7) Either of the following criteria are met:~~

18 ~~(A) (i) At least 10 percent of the housing is sold to families of~~  
19 ~~moderate income, or not less than 10 percent of the housing is~~  
20 ~~rented to families of low income, or not less than 5 percent of the~~  
21 ~~housing is rented to families of very low income.~~

22 ~~(ii) The project developer provides sufficient legal~~  
23 ~~commitments to the appropriate local agency to ensure the~~  
24 ~~continued availability and use of the housing units for very low,~~  
25 ~~low-, and moderate-income households at monthly housing costs~~  
26 ~~determined pursuant to paragraph (3) of subdivision (h) of~~  
27 ~~Section 65589.5 of the Government Code.~~

28 ~~(B) The project developer has paid or will pay in-lieu fees~~  
29 ~~pursuant to a local ordinance in an amount sufficient to result in~~  
30 ~~the development of an equivalent number of units that would~~  
31 ~~otherwise be required pursuant to subparagraph (A).~~

32 ~~(8) The project is within one-half mile of a major transit stop.~~

33 ~~(9) The project does not include any single level building that~~  
34 ~~exceeds 100,000 square feet.~~

35 ~~(10) The project promotes higher density infill housing. A~~  
36 ~~project with a density of at least 20 units per acre shall be~~  
37 ~~conclusively presumed to promote higher density infill housing.~~  
38 ~~A project with a density of at least 10 units per acre and a density~~  
39 ~~greater than the average density of the residential properties~~  
40 ~~within 1,500 feet shall be presumed to promote higher density~~

1 housing unless the preponderance of the evidence demonstrates  
2 otherwise.

3 (b) Notwithstanding subdivision (a), this division shall apply  
4 to a development project that meets the criteria described in  
5 subdivision (a), if any of the following occur:

6 (1) There is a reasonable possibility that the project will have  
7 a project-specific, significant effect on the environment due to  
8 unusual circumstances.

9 (2) Substantial changes with respect to the circumstances  
10 under which the project is being undertaken that are related to the  
11 project have occurred since community-level environmental  
12 review was certified or adopted.

13 (3) New information becomes available regarding the  
14 circumstances under which the project is being undertaken and  
15 that is related to the project, that was not known, and could not  
16 have been known, at the time that community-level  
17 environmental review was certified or adopted.

18 (c) If a project satisfies the criteria described in subdivision  
19 (a), but is not exempt from this division as a result of satisfying  
20 the criteria described in subdivision (b), the analysis of the  
21 environmental effects of the project in the environmental impact  
22 report or the negative declaration shall be limited to an analysis  
23 of the project-specific effect of the projects and any effects  
24 identified pursuant to paragraph (2) or (3) of subdivision (b).

25 (d) For the purposes of this section, “residential” means a use  
26 consisting of either of the following:

27 (1) Residential units only.

28 (2) Residential units and primarily neighborhood-serving  
29 goods, services, or retail uses that do not exceed 15 percent of the  
30 total floor area of the project.